



February 2, 2004

Marlene H. Dortch,
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *In the Matter of Federal-State Joint Board on Universal Service*,
CC Docket 96-45, Comment on ETC application of Nextel for
Florida [filed September 16, 2003]

Dear Ms. Dortch:

The National Association of State Utility Consumer Advocates (“NASUCA”),¹ submits these comments concerning the above-cited wireless carrier application for eligible telecommunications carrier (“ETC”) status pursuant to 47 U.S.C. 214(e). As previously stated, NASUCA’s perspective is as a representative of the consumers who are intended to benefit from the universal service programs of the 1996 Act, but who also pay for those programs. In its application, NPCR, Inc. d/b/a Nextel Partners (“Nextel”) seeks ETC status in the Florida territories of BellSouth Telecommunications, Inc. (“BellSouth”), a non-rural carrier, and in the territories of four different rural carriers.²

¹ NASUCA is an association of 44 consumer advocates in 42 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See. e.g., Ohio Rev. Code Chapter 4911.

² ALLTEL Florida Inc.; Frontier Communications - South; GTC, Inc. - FL; and Quincy Telephone Company.

There are numerous issues that the Commission must consider regarding Nextel's application. The issues include those recently addressed by the Commission in *Virginia Cellular*.³

Each of the Commissioners' separate statements in *Virginia Cellular* demonstrate that the Commissioners did not expect the *Virginia Cellular* findings to be the final word on these issues, nor necessarily a template to be applied in the review of subsequent ETC applications. This is due, in part, to the specific commitments made by Virginia Cellular.⁴

In *Virginia Cellular*, the Commission perceived the principal benefits of Virginia Cellular's ETC designation -- required to make the application in the public interest -- as greater mobility and increased choice of service providers.⁵ These are not the goals of the universal service provisions of the Act. The main goal of these provisions is to ensure that all consumers -- including those in high cost areas -- have access to the services designated as eligible for support, of reasonable quality, at rates that are affordable and are reasonably comparable to urban rates.

In reviewing this application for Florida and others,⁶ the Commission should consider the following:

First, the Federal-State Joint Board on Universal Service ("Joint Board") is currently examining ETC issues referred by the Federal Communications Commission ("Commission").⁷ Many of the comments filed -- including those from NASUCA⁸ -- propose substantial changes to the Commission's rules that govern the ETC designation process. In *Virginia Cellular*, the Commission provided assurance that ETCs will continue to be subject to the Commission's requirements for ETCs if those requirements change.⁹

On a more substantive level, the Commission must note that the public interest is a key Congressionally-mandated factor in the designation of any ETC, and that the mere promotion of competition is not sufficient to meet the public interest test required by 47

³ In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004) ("*Virginia Cellular*").

⁴ *Virginia Cellular* at ¶ 14-16.

⁵ *Id.*, ¶ 12.

⁶ The Commission reviews applications for ETC status where, as here, state commissions lack or have declined jurisdiction to make the required findings under 47 U.S.C. 214(e).

⁷ See Public Notice, FCC 03J-1 (rel. February 7, 2003).

⁸ NASUCA Comments (May 4, 2003).

⁹ *Virginia Cellular* at ¶ 12.

U.S.C. 214(e).¹⁰ The public interest test should include a number of factors such as those outlined in previous NASUCA comments:¹¹

- As a minimum, a CETC should be required to offer a calling plan that provides unlimited local calling and a monthly price comparable to that charged by the ILEC.
- As a minimum, CETCs should be required to submit to the consumer protection rules, including disclosure, notice, billing and collection rules, that apply to ILECs.
- CETCs should be required to provide data to demonstrate their need for high-cost support.
- CETCs should be required to be able to provide service to all customers within the designated service area within a reasonable time.
- All ETCs should provide equal access.¹²

Further, with regard to these wireless carriers requests to be designated as an ETC in the service area of rural incumbent local exchange carriers, the Commission should be guided in its public interest determination under 47 U.S.C. 214(e)(2) by reference to the total amount of monthly per-line federal universal service high-cost support received by the study area of the rural companies.¹³ The level of per line per month support received

¹⁰ Some parties have argued that the mere promotion of competition is sufficient to meet the public interest test, and that the public interest does not apply to requests to be designated as an ETC in non-rural carriers' territories. In *Virginia Cellular*, the Commission rejected both arguments. *Virginia Cellular*, ¶ 27.

¹¹ In *Virginia Cellular*, the Commission made some findings consistent with these NASUCA proposals, and other findings inconsistent with the proposals. NASUCA will not attempt here to address the shortcomings of various of the Commission's findings.

¹² Equal access meets the requirements of Section 254(c)(1) and does not contravene Section 332(c)(8) of the Act. Equal access provides a direct, tangible consumer benefit by placing the customer in charge of deciding which long distance plan is more appropriate for that customer. Equal access is even more important to rural customers who have fewer choices of carriers than urban customers.

¹³ This proposal was made by Billy Jack Gregg, Director of the Consumer Advocate Division for the State of West Virginia and member of the Federal-State Joint Board on Universal Service, at the en banc meeting of the Joint Board in Denver, Colorado on July 31, 2003. NASUCA supports the use of this proposal. The Commission did not have this proposal in the record to consider in *Virginia Cellular*.

The proposal is that in rural study areas receiving \$30 per line per month in support or more, it should be presumed that only one ETC should be designated. In rural study areas receiving \$20 per line per month or more, but less than \$30 per line per month, it should be presumed that only one additional ETC should be designated. There should be no presumed limit on the number of ETCs in rural areas receiving less than \$20 per line per month in support.

These presumptive benchmarks are based on the average amount of support for all study areas (\$30.74 per line per month) and the median amount of support for all study areas (\$18.33). These presumptive benchmarks clearly identify high-cost areas where it is not in the public interest to subsidize an unlimited number of ETCs.

by the four Florida rural carriers impacted by Nextel's application is low enough not to raise the serious public interest concerns addressed in the Gregg proposal.¹⁴

In *Virginia Cellular*, the Commission disqualified Virginia Cellular from ETC status in the single wire center for which it applied in the study area of one specific rural ILEC, because of cost disparities between that wire center and the remainder of the ILEC's wire centers. NASUCA has not analyzed the cost differences for the wire centers covered by Nextel's application for Florida, but supports the use of such fact-specific considerations in judging ETC applications.

NASUCA appreciates the Commission's consideration of these positions as it concludes its deliberation on Nextel's application.

Sincerely,

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Based on 3rd quarter 2003 data published by USAC, study areas with support of \$20 per line per month or more represent only 1.7% of access lines in the United States, but receive 45% of total high-cost support. Commission data requests in pending ETC applications have attempted to get at some of the same high-cost issues by asking for information, such as customer density in application areas. Support per line data distills all cost-influencing factors - such as density, distance and topography - into readily available information.

¹⁴ See Attachment.

ATTACHMENT

NEXTEL FL

		Monthly High-Cost Per Line Support		
SAC	Company	Access Lines	3Q 2003	1Q 2004
210336	Alltel Florida Inc	94,573	\$1.70	\$1.03
210318	Frontier Comm-South	4,744	\$7.20	\$6.56
210329	GTC, Inc. dba GT Com	11,608	\$5.50	\$6.79
210338	Quincy Tel Co-FL Div	14,314	\$12.03	\$9.93